

**TIPPECANOE COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING
AUGUST 4, 2003**

The Tippecanoe County Commissioners met on Monday, August 4, 2003 at 10:00 A.M. in the Tippecanoe Room in the County Office Building. Commissioners present were: President KD Benson, Vice President Ruth E. Shedd, and Member John L. Knochel. Also present were: Auditor Robert A. Plantenga, County Attorney Douglas J. Masson, and Secretary Pauline E. Rohr. (Commissioners' Assistant Jennifer Weston was absent.)

Also present was Area Plan Attorney Jay Seeger.

President Benson called the meeting to order and led the Pledge of Allegiance.

APPROVAL OF MINUTES

Commissioner Shedd moved to approve the minutes of the July 21, 2003 Regular Meeting as distributed, seconded by Commissioner Knochel; motion carried.

APPROVAL OF ACCOUNTS PAYABLE VOUCHERS

- Upon the recommendation of Auditor Plantenga, Commissioner Knochel moved to approve the Accounts Payable Vouchers as submitted for the periods ending July 25, 2003, August 1, 2003, and August 4, 2003, seconded by Commissioner Shedd; motion carried.

DNR RULE CLARIFICATION UPDATE: (Refer to 07-30-2003 Commissioners' Minutes)

At a Special Commissioners' Meeting last Wednesday evening, July 30th, the Commissioners and residents in the floodway in Tippecanoe County were informed of the DNR new rule defining possible floodway activities:

(quote)

The DNR rule says, "reconstruction for purposes of IC 14-28-1-20, IC 14-28-1-24, and IC 14-28-1-25, means an activity that rehabilitates or restores the structural elements of the building, including, but not limited to, replacing walls, restoring the foundation, replacing floors, or conducting work on any elements necessary to support the structure. The term does not include activities such as painting, replacing floor coverings, replacing doors, replacing windows, or cleaning."

(unquote)

Area Plan Attorney Jay Seeger reported his discussions of the interpretation of the new rule with DNR staff counsel on Thursday and Friday were positive. He believes they will not challenge building permits already issued by Tippecanoe County and will accept drywall as a repair, not reconstruction. As support, Mr. Seeger said he cited sections of the State Building Code that classifies drywall a wall covering as opposed to a structural element of the wall. Although he believes they were receptive, the interpretation of the rule has to be cleared by both the DNR and SEMA. It is his understanding that they are meeting today and he hopes to have a final interpretation by the end of the day.

President Benson asked Mr. Seeger how our participation in the National Flood Insurance program will be affected if we allow drywall replacement without the approval of DNR and SEMA. Mr. Seeger responded that SEMA can disqualify us from receiving flood insurance and all disaster aid relief until the County undergoes a remediation program that will undo all that it has done. Since he expects a decision today, he thinks it would be prudent to wait for a ruling. County Attorney Masson agreed since we only have a few hours to wait.

President Benson asked for a clarification of the Federal buy-out program. Mr. Seeger explained that Federal dollars will come to SEMA who will then issue the dollars in the form of grants to requesting Counties. If a homeowner rejects the offer to purchase, the government will never make the offer again even for a future event.

Michael Sargent, 6536 Goldsberry Rd.: Mr. Sargent reported a conversation with Mary Moran, SEMA Program Coordinator, who explained the buy-out is voluntary on the part of the homeowner. If a homeowner wishes to sell, his name will be put on a list and, when money becomes available, two appraisals at market value will be conducted on the property followed by an offer from the government. If the homeowner refuses the offer, his name will be moved to the bottom of the list but will not be removed. Mr. Sargent also asked what happens when the homeowner who resides in a floodway has exhausted the 50% life time improvement limit discussed during the meeting on the 30th.

President Benson asked Mr. Seeger to get written verification regarding the rules of the buy-out program as well as clarification of the 50% improvement limit for those located in the floodway.

- Commissioner Knochel moved to authorize President Benson to issue a public statement that Tippecanoe County does stand behind the Building Permits that were issued in good faith on the condition we receive a favorable ruling from the DNR and our participation in the National Flood Insurance Program is not jeopardized, seconded by Commissioner Shedd.

Commissioner Knochel commented he understands why the residents are upset with no decision since it is almost one month to the day since the flooding occurred. Since the Commissioners met last Wednesday, he thinks the State should be able to give us an answer in two days. President Benson agreed.

- The motion carried.

Fred Peacock, 6519 Goldsberry Rd.: Mr. Peacock said the County should be aware a number of displaced and ill people are waiting for a resolution to the issue. In his opinion, the DNR wants this river frontage to add to the Prophetstown State Park.

President Benson stated the Commissioners' concern is for the citizens' safety.

HIGHWAY: Executive Director Mark Albers**McCUTCHEON PARKING RESTRICTION UPDATE**

The signs restricting parking in the McCutcheon High School area have been ordered and should be installed within the next two weeks.

AWARD QUOTE: Used Dump Trucks

Mr. Albers reported the receipt of only one quote from Wabash Ford Sterling Truck Sales in the amount of \$26,000 each for two (2) used Dump Trucks.

- Commissioner Shedd moved to award the quote to Wabash Ford Sterling Truck Sales for two Dump Trucks for a total amount of \$52,000, seconded by Commissioner Knochel; motion carried.

ROAD SALT QUOTES ANNOUNCED

Mr. Albers announced requests for quotes for 2,500 tons plus or minus for road salt were sent to Cargill, Morton, Dust Block, and IMC for award at the August 18th meeting. Approximately 5,000 tons of road salt were used in 2003.

CONTRACT: 2003 Pavement Marking Program Contract

On July 21, 2003, the Commissioners awarded the quote for the 2003 Pavement Marking Project to Interstate Road Management Corp. Mr. Albers requested the Commissioners' approval of the Contract for Public Works.

- Commissioner Shedd moved to approve the 2003 Pavement marking Program Contract with Interstate Road Management Corp., seconded by Commissioner Knochel; motion carried.

PERMIT TO CLOSE ROAD APPLICATION

Mr. Albers submitted an application to close the dead end section of Secretariat at the intersection of Man O' War in Huntington Farms SD from 6:30 P.M. to 8:30 P.M., Saturday, August 16, 2003, for a subdivision ice cream social.

- Commissioner Shedd moved to approve the request to close the dead end section of Secretariat as requested, seconded by Commissioner Knochel; motion carried.

**WARRANTY DEED: CR 550 E Project (SR 26 to McCarty Lane)
PARTIAL RELEASE OF MORTGAGE**

Mr. Albers submitted for acceptance the following Warranty Deed and Partial Release of Mortgage for the CR 550 E Project.

Key #112-03000-0160: 30' ½ width R-O-W easement; A part of the NW ¼ of Sec. 30, Twp. 23 N, R 3 W, Perry Twp., from George R. Evans.

- Commissioner Shedd moved to approve the Warranty Deed and Partial Release of Mortgage for the CR 550 E Project, seconded by Commissioner Knochel; motion carried.

SET PUBLIC HEARING: Vacation of Public Way

- By request of Shaw Farms LLP, Commissioner Shedd moved to set a Public Hearing for the vacation of CR 550 E from McCarty Lane to the petitioner's southern property line for Wednesday, September 3, 2003, at 10:00 A.M., seconded by Commissioner Knochel; motion carried.

CERTIFICATES OF INSURANCE

- ♦ Northland Insurance Comp for Nelson Bros. Mobile Home Transport, LLC
- ♦ Indiana Insurance Group for Tempest Homes LLC
- ♦ Indiana Insurance Company for Fairfield Contractors, Inc.
- ♦ State Farm Fire and Casualty Company for Sunset Builders c/o James Koches

ORDINANCE 2003-33-CM: UZO Amendment #38

Ordinance 2003-33-CM will appear in its entirety in the Ordinance and Resolution Book in the County Auditor's Office.

- Commissioner Shedd moved to hear and approve Ordinance 2003-33-CM, seconded by Commissioner Knochel.

Area Plan Assistant Director Sallie Fahey explained the changes in this amendment:

- | | |
|-----------|--|
| Section 1 | adds definitions for Indiana Scenic Byway and River Road Scenic Byway. |
| Section 2 | adds Scenic Byway definition to the Rural Outdoor Sign definition. |
| Section 3 | provides a description of River Road Scenic Byway to be added to the Appendix. |
| Section 4 | eliminates the word restaurant from drive-thru menu boards. |
| Section 5 | corrects campsites not permitted in floodplain to floodway. |

Auditor Plantenga recorded the vote:

KD Benson	Yes
Ruth Shedd	Yes
John Knochel	Yes

- The motion to approve Ordinance 2003-33-CM passed 3 – 0.

ORDINANCE 2003-38-CM: UZO Amendment #39

Ordinance 2003-38-CM will appear in its entirety in the Ordinance and Resolution Book in the County Auditor's Office.

- Commissioner Shedd moved to hear and approve Ordinance 2003-38-CM, seconded by Commissioner Knochel.

Area Plan Assistant Director Sallie Fahey explained the changes in this amendment:

1. Laboratory Animals

The change for Laboratory animal farms would leave the use with a special exception in A and AW but would remove it from the AA district. It would also allow the use by special exception in the OR district and by right in the I1, I2, and I3 districts.

2. Violation Fees

Allows the ABZA or Administrative Officer to recover reasonable attorney's fees, court costs and other expenses of litigation when bringing action against people who have violated the Unified Zoning Ordinance.

Auditor Plantenga recorded the vote:

Ruth Shedd	Yes
John Knochel	Yes

KD Benson Yes

- The motion to approve Ordinance 2003-38-CM passed 3 – 0.

ORDINANCE 2003-34-CM: Z-2125, Mann Properties, LLP A to R1B

- As requested in a letter from the petitioner, Commissioner Shedd moved to continue Ordinance 2003-34-CM until 10:00 A.M., August 18, 2003, seconded by Commissioner Knochel; motion carried.

ORDINANCE 2003-35-CM: Z-2129, R. Gregg Sutter (Abingdon) AW to RE

Ordinance 2003-35-CM will appear in its entirety in the Ordinance and Resolution Book in the County Auditor's Office.

- Commissioner Shedd moved to hear and approve Ordinance 2003-35-CM, seconded by Commissioner Knochel.

Representing the petitioner, Bob Gross, R W Gross & Associates, requested a zoning change from AW to RE for 11.252 acres to accommodate a four (4) lot Rural Estate subdivision. Mr. Gross reported that the restrictive covenants have been amended, signed by affected property owners, and will be recorded. Perk tests were conducted and the soils were found suitable for septic systems. Mr. Gross said this area is over 800' and a deep ravine away from the nearest objecting landowner.

Public Comments:

Linda McElderry, 7736 Amanda Lane, Catterson Hollow: Ms McElderry stated her opposition to the proposed rezone. She provided a current map of the area downloaded from the Terra Serve web site showing the relation of Catterson Hollow SD to the proposed Abingdon RE.

Don Steele, 913 Jill Place, Catterson Hollow: Mr. Steele objected to the rezone because of the covenants and health issues. He thinks there is only enough flat area to accommodate three lots because the area sits at the top of ravines that cascade down. He questioned where the wells and septic systems will be located. Mr. Steele is bothered because the McCleary's house is so close, an estimated 150', he can see it in the winter when the leaves are off the trees.

Myra Steele, 913 Jill Place, Catterson Hollow: Mrs. Steele said all the lots in Catterson Hollow have at least 2½ acres and they moved there for the space and quiet surroundings. She said the covenants for Abingdon say there will be three lots but now Mr. Sutter wants to change that to four. Since they have a well, she is concerned that more homes will deplete the water table.

Suzanne Collins, 7602 Amanda Place, Catterson Hollow: Ms Collins opposed the rezone and pointed out that the Area Plan Commission voted 5 yes and 8 no against this zoning change. She also expressed her concern about the change to the covenants but was glad to hear that perk tests on the soils were conducted. She wondered if the perk results have stipulations since McCleary, who has a specialized pressure system, has a large property to support his large septic system. Since one of the lots will only be 1.621 acres, she wondered where a large septic field will be located if that is required as a result of the perk tests.

Gregg Sutter, the petitioner, answered some of the issues raised by Catterson Hollow residents. He showed on the map that the estimated distance between the Steele's house and the McCleary's house is closer to 600' than 150'. He pointed out that he was there first when he created the twelve lots in the existing Abingdon in the early 1990s before Catterson Hollow was developed. Answering the charge that he created small lots, he read acreages of those twelve (12) lots which showed the smallest was 2.0 acres and four were ten plus acres. Again referring to the map, Mr. Sutter demonstrated that the four proposed lots in this RE are flatter than those in Catterson Hollow for septic systems.

Commissioner Knochel commented that the first proposal Mr. Sutter brought to Area Plan was for five lots but that number has been reduced to four.

Mrs. Fahey explained that the number of lots is part of the zoning. The sketch and preliminary plat cannot change the lots except to reduce the number. The Health Department will determine how many septic systems the area can accommodate. The preliminary plat is not filed until the rezoning is approved.

President Benson said she is disturbed that Mr. Sutter says he was there first. She also has a problem with his change of covenants. She does agree that RE is the correct zoning.

Commissioner Knochel said Mr. Sutter compromised when he reduced the number of lots from five to four and water and sewage concerns are up to the Health Department.

Auditor Plantenga recorded the vote:

John Knochel Yes
KD Benson Yes
Ruth Shedd Yes

- The motion to approve Ordinance 2003-35-CM passed 3 – 0.

ORDINANCE 2003-36-CM: Z-2132, Abbington Development, LLC NB to GB

ORDINANCE 2003-30-CM: Z-2131, Abbington Development, LLC R3 and NB to PDRS

Ordinances 2003-36-CM and 2003-30-CM will appear in their entirety in the Ordinance and Resolution Book in the County Auditor's Office.

- Commissioner Shedd moved to hear and approve Ordinance 2003-36-CM and Ordinance 2003-30-CM, seconded by Commissioner Knochel.

Attorney Joe Bumbleburg represented the petitioner.

Ordinance 2003-36-CM

Mr. Bumbleburg requested a zoning change of 31.95 acres from R3 and NB to PDRS for a 146 lot single family residential development. This change will be a 100% decrease of R3 in this area. It will also reduce some of the NB into PDRS because there has been no response to the NB zoning.

Ordinance 2003-30-CM

Mr. Bumbleburg said the zoning change of 13.23 acres from NB to GB will provide an opportunity for public space on this property located at the corner of Klondike and Lindberg Roads. He said the petitioner was contacted by Tippecanoe County Public Library who may consider this as a possible site for a branch. He pointed out that GB zoning is located on the opposite corner.

There were no other comments concerning these ordinances.

Auditor Plantenga recorded the votes:

Ord. 2003-36-CM

KD Benson Yes
Ruth Shedd Yes
John Knochel Yes

- The motion to approve Ordinance 2003-36-CM passed 3 – 0.

Ord. 2003-30-CM

Ruth Shedd Yes
John Knochel Yes
KD Benson Yes

- The motion to approve Ordinance 2003-30-CM passed 3 – 0.

VARIANCE: Boothe Farms SD

- Commissioner Shedd moved to approve the variance to waive installation of a turnaround at the north end of

Boothe Farms SD for existing Wentworth Lane, seconded by Commissioner Knochel.

Representing the petitioner, Bob Gross, R W Gross & Associates, requested a variance to waive installation of a turnaround at the north end of this rural estate subdivision for existing Wentworth Lane. He explained that the Subdivision Ordinance requires a turnaround at the end of a Rural Estate road but, because the end of Wentworth Lane is at the entrance of an existing parcelization, he thinks it would be confusing and serve no useful purpose.

- The motion to approve the variance passed.

ORDINANCE 2003-39-CM: Section Corner: Surveyor Steve Murray

Ordinance 2003-39-CM will appear in its entirety in the Ordinance and Resolution Book in the County Auditor's Office.

- Commissioner Knochel moved to waive the reading of the Ordinance, seconded by Commissioner Shedd; motion carried.

Mr. Murray explained that 1,700 section corners are monumented at a cost of \$1,000 each. By Statute, the County can adopt an ordinance that prohibits movement or damage to markers and prescribes monetary penalties. The Ordinance will require 30 days written notice to the County Surveyor if it is necessary to temporarily remove a monument marking a corner. It also sets a fine up to \$2,000 for each monument damaged or removed in violation of the Ordinance. All fines will be deposited in the Surveyor's Corner Perpetuation Fund.

There was no public discussion.

- Commissioner Shedd moved to approve Ordinance 2003-39-CM on first reading, seconded by Commissioner Knochel.

Auditor Plantenga recorded the vote:

John Knochel Yes
KD Benson Yes
Ruth Shedd Yes

- The motion to approve Ordinance 2003-39-CM passed 3 – 0 on first reading.
- Commissioner Shedd moved to suspend the rules and allow a vote on second reading the same day presented, seconded by Commissioner Knochel. With 1 no vote by Commissioner Benson, the motion failed because it was not unanimous.

President Benson said she voted no because she thought they should have time to receive input.

Since the vote to suspend the rules must be unanimous, Ordinance 2003-39-CM will be heard on second reading at 10:00 A.M., Monday, August 18, 2003.

MEMORANDUM OF UNDERSTANDING: Wal-Mart

Representing Wal-Mart, Attorney Dan Teder explained that Wal-Mart plans to expand its West Lafayette location and is purchasing .859 acres of a 12 acre tract from Charles and Nancy Corns. Since property taxes are paid in arrears, the Corns will receive the 2003 pay 2004 tax bills on the entire 12 acres. While Wal-Mart will pay its share of the property taxes, it cannot assure that the Corns will pay on their remaining 11 acre portion nor does it want to be held responsible or have the Wal-Mart parcel become the subject of a tax lien or tax sale. The Memorandum asks the Commissioners to agree to the following:

(quote)

Provided the Wal-Mart Purchase Parcel is split from the Entire Property and a separate tax parcel number is established at the time Wal-Mart acquires the Wal-Mart Purchase Parcel from Corns and further provided that Wal-Mart timely pays the Wal-Mart Share of the 2003 taxes, the County will not seek, pursue, or aid in the pursuit of, a tax dale against the Wal-Mart Purchase Parcel, or will not otherwise attempt or seize upon the Wal-Mart Purchase Parcel as security for the payment of the Remainder Share of the 2003 taxes.

(unquote)

- Commissioner Shedd moved to approve the Memorandum of Understanding between Tippecanoe County and Wal-Mart pertaining to real estate property tax, seconded by Commissioner Knochel; motion carried.

DNR RULE CLARIFICATION UPDATE: resumed

Area Plan Attorney Jay Seeger reported he was notified that the DNR will not consider drywall as part of the structure, and permits issued by the Building Commissioner for the replacement of drywall will be allowed. SEMA is also in agreement. Mr. Seeger said he will try to get this interpretation in writing.

President Benson announced she will release a written statement early this afternoon. She asked Mr. Seeger to also work with Area Plan and the Building Commission to clarify in writing, with examples, the 50% rule for homes in the floodway. Mr. Seeger said he has already begun work on this issue.

APPOINTMENT: West Lafayette Library Board

- Commissioner Shedd moved to appoint John Steenhoven to complete a four year term to end the 30th of June 2004 on the West Lafayette Library Board, seconded by Commissioner Knochel; motion carried.

VILLA APPLICATIONS

- Commissioner Shedd moved to approve the applications of Catherine H. Wise, Della M. Vankirk, and Barry W. Smith to the Tippecanoe Villa, seconded by Commissioner Knochel; motion carried.

NEW BUSINESS**National Award**

President Benson announced the Soil & Water Conservation District received an award at the National Conference in Spokane, WA for their Water on Wheels Project.

Board of Finance: Treasurer Oneta Tolle

Mrs. Tolle reported the Board of Finance selected Bank One as the Primary Tier and Sandridge and Salin Banks as the Secondary tier for Tippecanoe County's Cash Management and requested the Commissioners' approval of the agreements.

- Commissioner Shedd moved to approve the agreements with the three banks ratifying the action of the Board of Finance, seconded by Commissioner Knochel; motion carried.

REPORTS

Reports from the Wabash River Parkway Commission, the Treasurer, and the State Board of Accounts Audit are on file in the Commissioners' Office for review.

ADJOURNMENT

- Commissioner Shedd moved to adjourn, seconded by Commissioner Knochel; motion carried.

Robert A. Plantenga, Auditor

**BOARD OF COMMISSIONERS OF
THE COUNTY OF TIPPECANOE**

KD Benson, President

Ruth E. Shedd, Vice President

John L. Knochel, Member

ATTEST:

Robert A. Plantenga, Auditor